

§ 300.701

Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau.

(Authority: 20 U.S.C. 1411(a)(2))

§ 300.701 State entitlement; formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 3 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 6 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

(c) For the purposes of this section, the *average per pupil expenditure in public elementary and secondary schools in the United States*, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the United States (which, for the purpose of this section, means the 50 States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free pub-

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lic education during that preceding year.

(Authority: 20 U.S.C. 1411(a)(4))

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701:

(1) If a State serves all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 3 through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged 3 through 17 in the State.

(2) If a State does not serve all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 5 through 17 to the extent that the number of those children is greater than 12 percent of the number of all children aged 5 through 17 in the State.

(3) The Secretary does not count children with disabilities who are counted under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged 3 through 17 and 5 through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))

§ 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts that all States are entitled to receive for that fiscal year, the maximum amount that all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(Authority: 20 U.S.C. 1411(g)(1))

(b) *Reporting dates for local educational agencies and reallocations.* (1) In

any fiscal year that the State entitlement has been ratably reduced, and that additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the SEA shall fix dates before which each LEA shall report to the State the amount of funds available to it under this part that it estimates it will expend.

(2) The amounts available under paragraph (a) of this section, or any amount that would be available to any other LEA if it were to submit an application meeting the requirements of this part, that the SEA determines will not be used for the period of its availability shall be available for allocation to those LEAs, in the manner provided in § 300.707, that the SEA determines will need and be able to use additional funds to carry out approved programs.

(Authority: 20 U.S.C. 1411(g)(2))

§ 300.704 Hold harmless provision.

No State shall receive less than the amount it received under part B of the Act for fiscal year 1977.

(Authority: 20 U.S.C. 1411(a)(1))

§ 300.705 Allocation for State in which by-pass is implemented for private school children with disabilities.

In determining the allocation under §§ 300.700–300.703 of a State in which the Secretary will implement a by-pass for private school children with disabilities under §§ 300.451–300.486, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.7(a) and 300.450) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1411(a)(1)(A), 1411(a)(3), 1413(d))

§ 300.706 Within-State distribution: fiscal year 1979 and after.

Of the funds received under § 300.701 by any State for fiscal year 1979, and

for each fiscal year after fiscal year 1979—

(a) 25 percent may be used by the State in accordance with § 300.620 and § 300.370; and

(b) 75 percent shall be distributed to the LEAs in the State in accordance with § 300.707.

(Authority: 20 U.S.C. 1411(c)(1))

§ 300.707 Local educational agency entitlement; formula.

From the total amount of funds available to all LEAs, each LEA is entitled to an amount that bears the same ratio to the total amount as the number of children with disabilities aged 3 through 21 in that agency who are receiving special education and related services bears to the aggregate number of children with disabilities aged 3 through 21 receiving special education and related services in all LEAs that apply to the SEA for funds under part B of the Act.

(Authority: 20 U.S.C. 1411(d))

§ 300.708 Reallocation of local educational agency funds.

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by the local agency with State and local funds otherwise available to the local agency, the SEA may reallocate funds (or portions of those funds that are not required to provide special education and related services) made available to the local agency under § 300.707, to other LEAs within the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by the other LEAs.

(Authority: 20 U.S.C. 1414(e))

§ 300.709 Payments to the Secretary of the Interior for the education of Indian children.

(a) *General.* (1) The Secretary makes payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations, aged 5 through 21, who are enrolled in elementary and secondary schools for Indian children